

Remarks

Claims 1-38 are pending in the application and stand rejected. Applicants gratefully acknowledge the Examiner's reconsideration and withdrawal of the previous rejections.

Information Disclosure Statement

Applicants e-filed an Information Disclosure Statement (IDS) and cited references on 20 March 2007 prior to the mailing date of this Office Action, which was mailed on 26 March 2007. However, the current Office Action does not indicate that the previous IDS was considered. Applicants respectfully request that the Examiner consider the IDS.

Claim Rejections 35 U.S.C. § 102

Claims 1, 2, 3, 7 and 10 are rejected under 102(e) as being anticipated by U.S. Patent No. 7,132,993 to Kuroda et al. However, Applicants respectfully traverse the rejection and contend that Kuroda is not prior art under 102(e).

It is axiomatic that a US Patent or Patent Application Publication can be considered as a 102(e) prior art reference only as of its effective US filing date - 35 U.S.C. 102(e) is explicitly limited to certain references filed in the United States before the invention thereof by the applicant. The prior art date of a reference under 35 U.S.C. 102(e) may be the PCT International Filing date only if the following conditions are satisfied:

- (i) the international filing date was on or after November 29, 2000,
- (ii) the international application designated the United States, and
- (iii) the international application was published by the World Intellectual Property Organization (WIPO) under the Patent Cooperation Treaty (PCT) Article 21(2) in the English language.

Moreover, the filing dates of Foreign applications that are claimed (via 35 U.S.C. 119(a) - (d), (f) or 365 (a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102 (e) dates for prior art purposes. This includes international filing dates claimed as foreign priority dates under 35 U.S.C. 365(a).

Here, the front page information of the US Kuroda patent indicates that Kuroda was based on a PCT International Application filed on 22 October 2003 (item 22) claiming priority to various Japanese patent applications (item 30) and that the PCT International Application of Kuroda was published on 6 May 2004 as WO2004/038861 (item 87). Even assuming that the Kuroda PCT application designated the United States, the Examiner has not shown that the International Application was published in English under PCT Article 21(2). In fact, it is believed that the International Publication WO 2004/038861 was actually published in Japanese, or some other foreign language, but not English.

In this situation, the Examiner cannot rely on Kuroda's international filing date or Japanese priority dates to establish a 102(e) prior art date. Indeed, the current application has a U.S. filing date of 9 December 2003 and Kuroda does not have any 102(e) prior art date that antedates Applicants' filing date of 9 December 2003. Therefore, Kuroda is disqualified as prior art under 102(e) thereby rendering the current 102(e) rejections legally deficient as a matter of law. Accordingly, withdrawal of the anticipation rejections is respectfully requested.

Claim Rejections 35 U.S.C. § 103

Claims 4-6, 8, 9 and 11-38 are rejected as being unpatentable over Kuroda in view of U.S. Patent No. 6,640,084 to Pande et al. Applicants respectfully assert that these obviousness rejections are legally deficient as a matter of law as Kuroda is not prior art against the current

claims. Therefore, withdrawal of the obviousness rejections is requested.

Respectfully submitted,

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